IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.321 OF 2005

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Union of India ...Petitioner

v/s.

M/s.Bright Power Project India

(Pvt.) Ltd. ...Respondent

...

Mr.Suresh Kumar for the Petitioner.

Mr.A.M.Vernekar for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 13TH DECEMBER,2005

P.C.:

1. This petition is filed under Section 34 of the Arbitration & Conciliation Act challenging the award

dated 17-5-2005 made by the arbitral tribunal. By this petition the Petitioner challenges only that part of the award by which the learned arbitral tribunal has awarded interest on the amount found due from the date of reference till the date of the award. The submission is that in view of clause 13(3) of the General Conditions of Contract no interest could have been awarded by the learned arbitrator on the amount found payable to the contractor under the contract.

2. In support of this submission the learned counsel relies on a judgment of the Division Bench of Allahabad High Court in the case of Union of India v/s.M/s.Madnani Construction Corporation (P) Ltd., AIR 2003 Allahabad 346. The learned counsel relying on the aforereferred judgment submits that clause 13(3) contains prohibition on awarding of interest on the sums found due to the contractor.

3. The learned Counsel appearing for the Respondent, on the other hand, relies on a judgment of the Division Bench of this Court in the case of Union of India v/s. Anand Builder. The learned Counsel submits that the Division Bench was considering the

clause which is identical to clause 13(3) and has held that that clause does not contain the prohibition on the power of the arbitrator to award interest. The learned Counsel appearing for the Petitioner relying on the judgment of the Supreme Court in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa v/s. N.C.Budharaj (Dead) by L.Rs. etc., AIR 2001 SC 626 and the judgment of the Supreme Court in the case of Durga Ram Prasad v/s. Govt. of A.P., (1995) 1 SCC 418 submits that clause 13(3) can not clearly impose prohibition on the power of the arbitrator to award interest on the sums which are found to be due.

4. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that according to the Respondent it is clause 13(3) of the G.C.C. which imposes prohibition on the power of the arbitrator to award interest on the sums found due by the arbitrator to the contractor. Clause 13 (3) reads as under:-

> 13(3) No interest is payable on the outstanding amount but this paragraph referred to only the interest on Security

> Deposit, Earnest Money deposit and on the balance payment.

5. Perusal of the judgment of the Division Bench in the case of Anand Builders of this Court shows that in that case the Division Bench was considering clause 16(3) of the contract and comparison of clause 13(3) of the present contract and clause 16(3) of the contract which the Division Bench was considering shows that they are in identical terms and the Division Bench has in clear terms held that the effect of that clause is that if the Government or the Executive Engineer makes payment of the amount due without it being required to refer to arbitrator and that the contractor required to file a suit, then interest is not payable. But that clause does not contain the prohibition on the power of the arbitrator to award the interest. Paragraph 7 of that judgment is relevant. It reads as under:-

> 7. In the present case, Clause 16(3) of the Contract is as under:-
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> "16(3) No interest will be payable upon the

earnest money and the security deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon."

Clause 16(3) is required to be strictly construed because, as held by the Supreme Court in the case of Board of Trustees of the Port of Calcutta (supra), a person who has a legitimate claim is entitled to payment within a reasonable time and if the payment has been delayed beyond reasonable time, he can legitimately claim to the compensated for that delay, whatever nomenclature one may give to his claim in that behalf. Therefore, if the Government or the Executive Engineer is straightaway paying the amount without referring to arbitration or without filing a suit, it may be said that the contractor is not entitled to receive interest on the amounts payable to him, but this prohibition or restriction would not apply to arbitration

proceedings or to a civil suit. Damages in the form of interest could be awarded for withholding the legitimate claim of the contractor. Further, whether interest could be awarded or not was also a question of interpretation of the said clause by the Arbitrator and that was within his jurisdiction. Hence, there is no substance in this Appeal.

6. It is clear from the judgment that the Division Bench has construed identical provision of the contract. The judgment of the Division Bench is binding on me and the judgment of the Division Bench is an authority for the proposition that falls for consideration in this case. Therefore, I am in no position to take different view than the one which is taken by the Division Bench. In view of the judgment of the Division Bench in the case of Anand Builder, in my opinion, no exception can be taken to the award. Petition, therefore, fails and is dismissed. The Petitioner is directed to pay costs of this petition to the Respondent, as incurred by

the Respondent.

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